

STATE OF MICHIGAN

BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. MARION MOORE
Judge, 36th District Court
Detroit, MI 48226

Docket No. _____
FORMAL COMPLAINT NO. 76

**DECISION AND RECOMMENDATION
FOR DISCIPLINE**

At a session of the Michigan
Judicial Tenure Commission
held on January 26, 2005,

PRESENT:

Hon. James C. Kingsley, Chairperson
Hon. Barry M. Grant, Vice Chairperson
Richard D. Simonson, Secretary
Carole Chiamp, Esq.
Hon. Kathleen J. McCann
Hon. Jeanne Stempien
Hon. Michael Talbot
Thomas J. Ryan, Esq.

I. INTRODUCTION

The Judicial Tenure Commission of the State of Michigan (“Commission”) files this recommendation for discipline against Hon. Marion Moore (“Respondent”), retired, who at all material times was a judge of the 36th District Court for the City of Detroit, Wayne County, Michigan. This action is taken

pursuant to the authority of the Commission under Article 6, §30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

On October 4, 2004, the Commission issued Formal Complaint No. 76 against Respondent. On October 18, 2004, the Respondent filed her answer to the formal complaint. On December 16, 2004, the Supreme Court appointed retired Court of Appeals Judge Harold Hood as the master to hear evidence and make proposed findings of fact and conclusions of law.

In lieu of proceeding with the formal hearing, the Examiner and Respondent entered into a Settlement Agreement, a copy of which is appended to this Decision and Recommendation as Attachment A. Based on Respondent's stipulation to certain facts and conclusions of law and her consent to this recommendation, the Commission concludes that Respondent engaged in misconduct contrary to the judicial canons and Michigan Court Rules. Because Respondent is no longer in office, the only sanction that can be imposed is a public censure. Accordingly, the Commission recommends that the Supreme Court publicly censure Respondent.

II. FINDINGS OF FACT

Based on the Stipulations of Fact (appended to this Decision and Recommendation as Attachment B) and the Settlement Agreement, the Commission adopts the stipulated facts *in toto* and incorporates them here:

1. Respondent at all relevant times has been a judge of the 36th District Court, City of Detroit, Wayne County, Michigan.

2. Respondent was the 36th District Court judge assigned to *People v Senszyszyn*, 36th District Court Case No. U-938769 (“*Senszyszyn*”), which involves a claim that the defendant improperly operated his taxi cab with a passenger in the front seat, and the rear seat unoccupied.

3. As the judge presiding over the case, Respondent adjourned it numerous times, including some occasions without conducting any court proceeding and others where only some minimal event occurred.

4. Respondent conducted the arraignment on November 4, 2002, and scheduled a final settlement conference for January 21, 2003.

5. On January 21, 2003, the defendant appeared for the final settlement conference. For some unknown reason, Respondent adjourned the conference to January 30.

6. Respondent again adjourned the proceedings scheduled for January 30, 2003, which were also described as a “final settlement conference,” without an explanation noted in the file. It appears the new scheduled date was March 19, 2003.

7. On March 7, 2003, Respondent adjourned the “final settlement conference” scheduled for March 19 to May 21, 2003, with the only explanation being a note written in the court file stating “judge not available.”

8. On May 21, 2003, the “final settlement conference” was held, but Respondent once again adjourned the case, and a special hearing date was scheduled for July 24, 2003, to allow the parties to insure that the exhibits for trial were properly marked.

9. The matter was re-scheduled for September 9, 2003.

10. On September 9, 2003, the proceedings were adjourned based on Respondent’s order for the defendant to undergo a competency evaluation.

11. As revealed by a notation in the court file, the results of the competency evaluation were received on October 27, 2003.

12. On November 10, 2003, Respondent adjourned the competency hearing because her “docket [was] to (*sic*) heavy,” as reflected by a note in the court file.

13. As of that hearing date, over a year had passed since the defendant had been arraigned.

14. Respondent’s staff scheduled a jury trial for February 16, 2004, almost three months from the hearing date and over 15 months since the arraignment.

15. On November 18, 2003, Respondent's staff adjourned the trial date an additional three weeks to March 9, 2004, as February 16 was a court holiday.

16. Respondent was on vacation during the month of March 2004, and the trial was adjourned in Respondent's absence by Hon. Nancy A. Farmer until April 12, 2004.

17. On April 12, 2004, Respondent adjourned the trial date until May 18, without explanation.

18. Respondent recused herself from the case in May 2004 upon notice of the Judicial Tenure Commission's investigation, at which time 18 months had passed after the arraignment, and a trial had not occurred.

III. STANDARD OF PROOF

The standard of proof in judicial disciplinary matters is by the preponderance of the evidence. *In re Ferrara*, 458 Mich 350, 360 (1998).

IV. CONCLUSIONS OF LAW

Based on the Settlement Agreement, the Commission adopts the conclusions of law *in toto* and incorporates them here. Respondent's conduct as admitted and described above constitutes:

- (a) Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- (b) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- (c) Persistent failure to perform judicial duties, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended and MCR 9.205;
- (d) Persistent neglect in the timely performance of judicial duties, contrary to MCR 9.205 (B)(1)(b);
- (e) Failure to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- (f) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1; and
- (g) Conduct violative of MCR 9.104(1), and (2) in that such conduct:
 - (1) is prejudicial to the proper administration of justice; and
 - (2) exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

V. DISCIPLINARY ANALYSIS

A. *Brown* factors

The Michigan Supreme Court set forth the criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293 (1999). A discussion of each relevant factor follows.

(1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct

Respondent's actions do not provide evidence of a pattern of misconduct.

(2) misconduct on the bench is usually more serious than the same misconduct off the bench

Respondent's actions occurred on the bench, which is generally more serious in the context of the impact on the number of individuals affected by her conduct. However, her actions in the present matter were limited to one case.

(3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety

Respondent's actions were directly prejudicial to the administration of justice, as they involved her duties as a judge, and resulted in a case remaining at

issue for 18 months without being tried until Respondent recused herself from the case.

- (4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does**

Respondent's actions implicate the actual administration of justice, due to the delay in proceeding to trial in the proceeding.

- (5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberate**

Respondent's misconduct may have been deliberate, as a number of the adjournments were issues for either dubious reasons (to make sure exhibits were properly marked, or that the judge was "not available") or for no stated reason at all.

- (6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery**

Respondent's misconduct served to undermine the ability of the justice system to discover the truth in a legal controversy, as the case was not tried even though it was pending for over 18 months.

B. Proportionality

In determining an appropriate sanction in this matter, the Commission is mindful of the Supreme Court's call for "proportionality" based on comparable conduct. The only matters in recent years in which the Michigan Supreme Court has disciplined a respondent based on delay in the resolution of proceedings are *In re Jelsema*, 463 Mich 1229 (2000), and *In re Hathaway*, 464 Mich 672 (2001).

In *Jelsema*, the respondent judge failed to timely address a child support proceeding which had been remanded from the Michigan Supreme Court after his original decision was vacated. The delay measured three years from the remand, and 11 months from a hearing on the propriety of a proposed order in the matter. Judge Jelsema's misconduct was complicated by his failure to reply to two requests for comment and two 28-letters issued by the Commission (cooperation of the Respondent is not a factor in the present case). The Supreme Court publicly censured Judge Jelsema, with his consent.

In *Hathaway*, the delay involved repeated instances of adjourning most or all of the court proceedings scheduled for various days, and her failure to complete the duties of her office. The allegations of delay were accompanied

by findings that the respondent judge committed other significant acts of misconduct, and she was suspended without pay for six months.

The Louisiana Supreme Court provides guidelines to consider when assessing a case involving delay. Those are:

- (1) The amount of delay from the date the case was ripe for decision;
- (2) The complexity of the case;
- (3) The administrative and judicial workload of the judge;
- (4) The number of special assignments given to the judge;
- (5) The amount of vacation time taken; and
- (6) Other complaints involving delayed decisions made against the judge.

In re Van Sharp, 856 So 2d 1213, 1216 (2003).

The Commission believes that those factors provide a fair basis upon which to review conduct involving delay and to recommend sanctions. In the present matter, there were repeated adjournments, including several that were made with no reason when the matter was ready for trial, and had been pending for an excessive period. The case was not complex, as it involved an ordinance violation. Respondent had no administrative role in the 36th District Court, she did not receive special assignments, and her duties were no greater than the other judges of

the court. The case was adjourned at least once due to Respondent taking a vacation during the entire month of March 2003. As noted above, there are no other disciplinary sanctions against Respondent based on delay. Accordingly, based on the above analysis, Respondent's retirement, and her consent to discipline, the Commission believes that Respondent should be publicly censured.

VI. RECOMMENDATION

It is recommended that if the Court accepts this recommendation for discipline, it also enter an order releasing the master from any further responsibilities in this matter. It is further recommended that, pursuant to the consent of Respondent, the Michigan Supreme Court enter an order finding judicial misconduct as set forth above, including misconduct in office and conduct prejudicial to the administration of justice, and **PUBLICLY CENSURE** Hon. Marion Moore, retired.

JUDICIAL TENURE COMMISSION

HON. JAMES C. KINGSLEY
Chairperson

HON. BARRY M. GRANT
Vice-Chairperson

RICHARD D. SIMONSON
Secretary

CAROLE CHIAMP, ESQ.

HON. KATHLEEN J. McCANN

HON. JEANNE STEMPIEN

HON. MICHAEL TALBOT

THOMAS J. RYAN, ESQ.

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FORMAL COMPLAINT NO. 76

SETTLEMENT AGREEMENT

Hon. Marion Moore (“Respondent”), through her attorney, Philip J. Thomas, and the Examiner, Paul J. Fischer, (collectively, “the parties”) stipulate as follows.

A. PROCEDURAL MATTERS

1. The parties stipulate that a set of stipulated facts (“Stipulated Facts”) shall be presented to the Commission, which shall be the sole factual basis for the Commission’s decision and recommendation in this matter. The Stipulated Facts are set forth in Section B, below.

2. The Commission is to use the Stipulated Facts in lieu of the master’s report set forth in MCR 9.214.

3. The parties agree that the Commission’s sanction recommendation cannot exceed a public censure.

4. Respondent hereby knowingly, intentionally, and voluntarily waives her right to:

- a. a hearing before the Commission on the issues raised in this matter;
- b. a hearing before a Master on the issues raised in this matter;
- c. a Master's Report setting forth findings of fact and/or conclusions of law with respect to the issues raised;
- d. object to those findings before the Commission;
- e. a *de novo* review of the factual record by the Commission prior to the Commission's issuance of its Decision and Recommendation for Order of Discipline;
- f. appear before the Commission and argue regarding the facts and/or potential sanction recommendation;
- g. object to the Commission's Decision and Recommendation in the Michigan Supreme Court;
- h. file briefs in the Michigan Supreme Court in support of her position; and
- i. appear before the Supreme Court to argue regarding the facts, law or recommended sanction.

5. The parties further stipulate that Respondent will not be assessed costs in this matter.

6. Respondent consents to a sanction of a public censure and this document constitutes her consent to be disciplined pursuant to MCR 9.220(C).

7. The parties agree that the Stipulated Facts are conclusive as to the matters stipulated.

8. The Commission may attach a copy of this Settlement Agreement to its Decision and Recommendation.

9. Along with the filing of its Decision and Recommendation in this matter, the Commission may file in the Supreme Court a petition to dismiss the master already appointed.

B. THE STIPULATED FACTS

1. Respondent at all relevant times has been a judge of the 36th District Court, City of Detroit, Wayne County, Michigan.

2. Respondent was the 36th District Court judge assigned to *People v Senszyszyn*, 36th District Court Case No. U-938769 (“*Senszyszyn*”), which involves a claim that the defendant improperly operated his taxi cab with a passenger in the front seat, and the rear seat unoccupied.

3. As the judge presiding over the case, Respondent adjourned it numerous times, including some occasions without conducting any court proceeding and others where only some minimal event occurred.

4. Respondent conducted the arraignment on November 4, 2002, and scheduled a final settlement conference for January 21, 2003.

5. On January 21, 2003, the defendant appeared for the final settlement conference. For some unknown reason, Respondent adjourned the conference to January 30.

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18. Respondent recused herself from the case in May 2004 upon notice of the Judicial Tenure Commission's investigation, at which time 18 months had passed after the arraignment, and a trial had not occurred.

C. CONCLUSIONS OF LAW

1. The parties agree that the following are the only conclusions of law that may be drawn from the Stipulated Facts.

2. The above facts constitute:

- (h) Misconduct in office, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- (i) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended, and MCR 9.205;
- (j) Persistent failure to perform judicial duties, as defined by the Michigan Constitution of 1963, Article VI, §30, as amended and MCR 9.205;
- (k) Persistent neglect in the timely performance of judicial duties, contrary to MCR 9.205 (B)(1)(b);
- (l) Failure to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;
- (m) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 1; and
- (n) Conduct violative of MCR 9.104(1), and (2) in that such conduct:
 - (3) is prejudicial to the proper administration of justice; and
 - (4) exposes the legal profession or the courts to obloquy, contempt, censure or reproach.

Respectfully submitted,

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(313) 821-2600

DATED: _____

Hon. Marion Moore

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STIPULATIONS OF FACT

The Executive Director of the Judicial Tenure Commission, and Hon. Marion Moore (“the Respondent”) through her attorney, Philip J. Thomas, stipulate to the following facts:

1. Respondent at all relevant times has been a judge of the 36th District Court, City of Detroit, Wayne County, Michigan.
2. Respondent was the 36th District Court judge assigned to *People v Senszyszyn*, 36th District Court Case No. U-938769 (“*Senszyszyn*”), which involves a claim that the defendant improperly operated his taxi cab with a passenger in the front seat, and the rear seat unoccupied.
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Respondent

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